



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 8, 1998

Mr. Jason C. Marshall  
Nichols, Jackson, Dillard, Hager & Smith  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR98-0061

Dear Mr. Marshall:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111420.

The City of Coppell (the "city") received a request for documents concerning the following:

- (1) (3921) an investigation and prosecution of "disorderly conduct, handgun in a public place on 200 block of Samuel on 28 August 1996;"
- (2) (3922) an investigation and prosecution of "offensive threats on 200 block of South MacArthur on 28 August 1996;"
- (3) (3926) an investigation and prosecution of a "suspicious vehicle and subject at Denton Tap and Parkway, erratic driving and no headlights. Driver arrest for traffic related charges. Cocaine found in car. Man arrested for possession of a controlled substance, a state jail felony on 6 April 1996;"
- (4) (3688-A) "an investigation of disorderly conduct at 185 West Parkway on 8 May 1997;"
- (5) (3772) "an investigation of [a] false report to police on 15 June 1997 on 100 block of Mesquitewood."

You indicate that you will disclose some of the requested information.<sup>1</sup> You assert that the remainder of the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.108, the "law enforcement exception," provides:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of [s]ection 552.021 information that is basic information about an arrested person, an arrest, or a crime.

We agree that the city has shown that the applicability of section 552.108(a) of the Government Code applies to (3922), (3926) and (3688-A), some of the information at issue,

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<sup>1</sup>Information normally found on the front page of an offense report is generally considered public. See generally Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We stress that the city attorney must release the type of information deemed public by the *Houston Chronicle Publishing Co.* case regardless of its location within an investigation file. The content of the information determines whether it must be released in compliance with the *Houston Chronicle Publishing Co.* case, not its literal location on the first page of an offense report.

since the information concerns pending cases. *See* Open Records Decision No. 216 (1978) at 3 (release of information during pending criminal case would interfere with prosecution of crime and law enforcement interests). We note that the department has discretion to release all or or part of the information at issue that is not otherwise made confidential by law. Gov't Code § 552.007

We have determined that, unless information relating to a criminal investigation or prosecution *concluded in a result* other than a conviction or deferred adjudication, it may not be withheld under section 552.108(a)(2) or (b)(2). You inform this office that the requested records under (3921) and (3772-A) relate to cases which have not yet resulted in final conviction or deferred adjudication. However, you have not shown that the requested information relates to a criminal investigation or prosecution that *did not* result in a conviction or a deferred adjudication. Consequently, we find that you have not shown the applicability of section 552.108(a)(2) or (b)(2) to the remaining requested information under (3921) and (3772-A).

However, we note the presence of CHRI in the documents submitted to this office for review. Criminal history information is exempt from public disclosure pursuant to section 552.101 of the Government Code. Section 552.101 applies to information that is made confidential by law, including information made confidential by statute. Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. This information must be withheld under section 552.101.

Section 552.130 of the Government Code governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

A review of the documents submitted reveals the presence of driver's license numbers which you must withhold pursuant to section 552.130.

Additionally, we note the presence of social security numbers which you must withhold in certain circumstances.<sup>2</sup> In conclusion, the remaining information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/glg

Ref.: ID# 111420

Enclosures: Submitted documents

cc: Mr. Doyle Calfey  
P.O. Box 191  
Coppell, Texas 75019-0191  
(w/o enclosures)

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<sup>2</sup>In addition, a social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii). In relevant part, the 1990 amendments to the federal Social Security Act make confidential social security account numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994). Section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing *any* social security number, you should ensure that it was not obtained pursuant to a law enacted on or after October 1, 1990.